IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3845 OF 2007

Shri N. Govindraj since deceased by his LRs. ..Petitioners

Vs.

S.A. Iqbal Ali and ors. ..Respondents

Mr. R.D. Soni i/by M/s. Ram and Co. for petitioners.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2007.

P.C.:

1. Heard Mr. Soni the learned counsel for the petitioners. The petitioners have impugned the order dated 24/1/2007 passed by the trial court allowing Interim Notice No. 526 of 2006 filed by Shri S.A. Iqbal Ali for being impleaded as a necessary party-defendant in RAE Suit No. 359/952 of 1998 filed by the present petitioners.

2. As per Mr. Soni, this order passed by the trial court is not in keeping with the legal requirements and every new occupant cannot come before

the trial court with an application for being impleaded as a necessary defendant. Even if it is accepted that such subsequent occupants of the suit premises are proper parties, they need not be the necessary parties so as to implead them an additional defendant in the pending suit. The trial court did not agree with these submissions and it noted that in the application filed under Order 39 Rule 2A of C.P.C. by the plaintiffs, the applicant Iqbal Ali has been impleaded as one of the respondents and the applicant has taken a plea that he was occupying the premises when the court commissioner visited and he was in occupation for quite some time as on that day. The applicant claims that he has been inducted in the suit premises by the original defendant no.2 - Rehematullah Baig. The plaintiff contends that defendant no.2 himself is an unauthorised entrant and the plaintiff accepts Shri Surendra Vithal Shetty as the tenant.

3. The Court Commissioner’s report dated 28/12/2000 is on record and it states that when the Court Commissioner paid a visit to the suit premises on 19/11/2000 at about 5.45 p.m. he had seen Shri

S.A. Iqbal Ali at the suit premises and one board of the size of 2 ft. x 4 ft. in the name of "Service Centre T.V., Watch, Radio and Xerox Prop. S.A. Iqbal Ali" was at the suit premises. Whether the said Iqbal Ali was in possession of the suit premises as on the day the suit was filed is a matter to be decided on the basis of evidence during the trial of the suit but certainly as per the Court Commissioner's report he was in occupation of some portion of the suit premises as on 19/11/2000. The trial court in the impugned order, therefore, rightly observed that it would be in the interest of the plaintiff to ensure that the occupants of the suit premises were impleaded as defendants and in any case impleading them as defendants per se would not be an acceptance by the plaintiff as sub-tenants or authorised occupants. Whether Iqbal Ali is an alien or he was inducted as a sub-tenant and was in occupation of the suit premises on the date of the filing of the suit are the issues to be decided on the basis of the evidence. By keeping in mind the principle of equity, the trial court has rightly allowed the application filed by Shri Iqbal Ali for being impleaded as an additional

defendant. This view taken by the trial court cannot be termed as perverse or manifestly erroneous so as to cause for interference under Article 227 of the Constitution.

4. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)